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10/802,329	03/16/2004	Arnold Gregory Klein		3744

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Arnold G. Klein  
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EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/802,329

Applicant(s)

KLEIN, ARNOLD GREGORY

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1, 2; Species II - Fig. 3; Species III - Figs. 4-6; Species IV - Figs. 7, 8; Species V - Fig. 9; Species VI - Fig. 10; and Species VII - Figs. 11, 12.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Arnold G. Klein on Friday, December 2, 2004 a provisional election was made without traverse to prosecute the invention of Species II, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

It appears that the abstract contains greater than 150 words.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5, 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claims 5 and 12, the phrase "an applied pattern of an upstanding textured material" is not supported by the specification or figures since such a pattern or textured material has not been particularly disclosed in the specification or figures. Only the embossed pattern was particularly disclosed.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the term "the said tape media reverse side" lacks positive antecedent basis and also renders the claim vague and indefinite since "at least one side" was set forth previously in line 3. Also see claim 9 for the same problem.

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In regard to claim 2, the phrase "or any other commonly used tape media" renders the claim vague and indefinite since it is unclear what "any other commonly used tape media" represents and therefore the metes and bounds of the patent protection desired is unclear. Also see claim 10 for the same problem.

In regard to claims 4 and 5, the phrase "the adjacent, front and back, tape adhesive covered surfaces..." renders the claims vague and indefinite since the terms "at least one side" and "reverse side" were previously set forth in claim 1. Also see claims 11 and 12 for the same problem.

In regard to claim 8, the phrase "an additional application of diatomaceous earth" renders the claim vague and indefinite since a first application of diatomaceous earth has not been claimed.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 9, 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Krolick 5,644,998.

Krolick discloses an insect barrier tape including a tape media (1) with at least one side coated with non-drying adhesive layer (8 in Fig. 8D) and an adhesively bound

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layer of diatomaceous earth (layer 8 of abrasive substance comprising diatomaceous earth); and a surface coating of contact adhesive (11) on the reverse side of the media.

In regard to claims 2 and 10, see col. 8, lines 1-64.

10. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Secula 3,816,956.

Secula discloses an insect barrier tape including a tape media (16, 18) with at least one side coated with non-drying adhesive layer (24); a surface coating of contact adhesive (22) on the reverse side of the media; the front and back of the tape media protected with a covering of low adhesion type contact paper (26, 28).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krolick 5,644,998 in view of Secula 3,816,956.

Krolick discloses at least one side protected with a covering of low adhesion type contact paper (9), but does not disclose the front and back of the tape media protected with a covering of low adhesion type contact paper. Secula discloses a tape media with front and back sides protected with a covering of low adhesion type contact paper (26, 28). It would have been obvious to a person of ordinary skill in the art at the time of the

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invention to modify the tape media of Krolick such that there is low adhesion type contact paper of on both the front and back sides of the tape media in view of Secula in order to protect the integrity of the adhesive surfaces before use.

13. Claims 4, 5, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krolick 5,644,998 in view of Thum RE11,276.

Krolick does not disclose the adhesive covered surfaces being protected from excessive contact by an embossed raised pattern or an applied pattern of textured material. Thum discloses adhesive covered surfaces (C) being protected from excessive contact by an embossed raised pattern (B; see Fig. 4 where B formed by indenting or corrugating) or an applied pattern of textured material (B comprising small seeds, ground emery, hard resin, coarse sand, etc.; see Figs. 2, 3), wherein the projections (B) maintain separation between sheets arranged in pairs or folded with the sticky surfaces in contact. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the adhesive covered surfaces of Krolick such that they are protected from excessive contact by an embossed raised pattern or an applied pattern of textured material in view of Thum in order to prevent adjacent surfaces from sticking to each other and also to prevent them from adhering to any appreciably disadvantageous or injurious extent.

14. Claims 6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krolick 5,644,998 in view of Japanese Pat. No. 6-46728 to Hisaoka or Nelson 6,651,379.



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Krolick does not disclose a handling region that is free from the non-drying adhesive coating or the adhesively bound diatomaceous earth coating. Hisaoka discloses a tape (A) with a handling region (peripheral part 4 not having a tacky layer over 2-3 cm width may be formed at each of the lower and upper peripheries) that is free from non-drying adhesive (tacky layer). Nelson 6,641,379 discloses a sheet (22) with a handling region (30) that is free from non-drying adhesive (24) that is provided along at least two peripheral edges so that the sheet may be easily manipulated without adhering to the users hands. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the tape of Krolick in view of Hisaoka or Nelson in order to provide an area free of adhesive which the user can utilize to manipulate the tape without getting adhesive on fingers or hands.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krolick 5,644,998 in view of Musket 5,477,636.

Krolick does not disclose the tape media having printed on graphics, symbols and/or directions for use. Musket discloses media with adhesive thereon (10) which can be formed into a tunnel-like package (10') wherein the outer surfaces of the package are provided with printed matter, such as advertising or instructions. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the device of Krolick such that it has printed on graphics, symbols and/or directions for use in view of Musket in order to make the device look more attractive to consumers and also to inform the user on how to use the device.

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16. Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Thum RE11,276.

Secula does not disclose the adhesive covered surfaces being protected from excessive contact by an embossed raised pattern or an applied pattern of textured material. Thum discloses adhesive covered surfaces (C) being protected from excessive contact by an embossed raised pattern (B; see Fig. 4 where B formed by indenting or corrugating) or an applied pattern of textured material (B comprising small seeds, ground emery, hard resin, coarse sand, etc.; see Figs. 2, 3), wherein the projections (B) maintain separation between sheets arranged in pairs or folded with the sticky surfaces in contact. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the adhesive covered surfaces of Secula such that they are protected from excessive contact by an embossed raised pattern or an applied pattern of textured material in view of Thum in order to prevent adjacent surfaces from sticking to each other and also to prevent them from adhering to any appreciably disadvantageous or injurious extent.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Japanese Pat. No. 6-46728 to Hisaoka or Nelson 6,651,379.

Secula does not disclose a handling region that is free from the non-drying adhesive coating or the adhesively bound diatomaceous earth coating. Hisaoka discloses a tape (A) with a handling region (peripheral part 4 not having a tacky layer over 2-3 cm width may be formed at each of the lower and upper peripheries) that is free from non-drying adhesive (tacky layer). Nelson discloses a sheet (22) with a

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handling region (30) that is free from non-drying adhesive (24) that is provided along at least two peripheral edges so that the sheet may be easily manipulated without adhering to the users hands. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the tape of Secula in view of Hisaoka or Nelson in order to provide an area free of adhesive which the user can utilize to manipulate the tape without getting adhesive on fingers or hands.

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Musket 5,477,636.

Secula does not disclose the tape media having printed on graphics, symbols and/or directions for use. Musket discloses media with adhesive thereon (10) which can be formed into a tunnel-like package (10') wherein the outer surfaces of the package are provided with printed matter, such as advertising or instructions. It would have been obvious to a person of ordinary skill in the art to modify the device of Secula such that it has printed on graphics, symbols and/or directions for use in view of Musket in order to make the device look more attractive to consumers and also to inform the user on how to use the device.

19. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Krolick 5,644,998.

Secula does not disclose at least one side with an adhesively bound layer of diatomaceous earth. Krolick discloses at least one side with an adhesively bound layer of diatomaceous earth (7, 8) which is an effective method of control of insects that is non-toxic to humans, animals, and birds. It would have been obvious to a person of

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ordinary skill in the art at the time the invention was made to employ the adhesively bound layer of diatomaceous earth of Krolick on the at least one side of Secula in order to provide additional means for controlling insects that will irritate and lacerate them in the event that the adhesive is no longer effective in entrapping the insects.

20. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Krolick 5,644,998 as applied to claim 9 above, and further in view of Thum RE11,276.

Secula discloses the protective low adhesion contact papers (26, 28) being corrugated, but Secula and Krolick do not disclose the adhesive covered surfaces being protected from excessive contact by an embossed raised pattern or an applied pattern of textured material. Thum discloses adhesive covered surfaces (C) being protected from excessive contact by an embossed raised pattern (B; see Fig. 4 where B formed by indenting or corrugating) or an applied pattern of textured material (B comprising small seeds, ground emery, hard resin, coarse sand, etc.; see Figs. 2, 3), wherein the projections (B) maintain separation between sheets arranged in pairs or folded with the sticky surfaces in contact. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the adhesive covered surfaces of Secula and Krolick such that they are protected from excessive contact by an embossed raised pattern or an applied pattern of textured material in view of Thum in order to prevent adjacent surfaces from sticking to each other and also to prevent them from adhering to any appreciably disadvantageous or injurious extent.

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21. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Secula 3,816,956 in view of Krolick 5,644,998 as applied to claim 9 above, and further in view of Japanese Pat. No. 6-46728 to Hisaoka or Nelson 6,651,379.

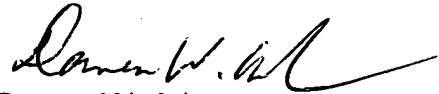
Secula and Krolick do not disclose a handling region that is free from the non-drying adhesive coating or the adhesively bound diatomaceous earth coating. Hisaoka discloses a tape (A) with a handling region (peripheral part 4 not having a tacky layer over 2-3 cm width may be formed at each of the lower and upper peripheries) that is free from non-drying adhesive (tacky layer). Nelson discloses a sheet (22) with a handling region (30) that is free from non-drying adhesive (24) that is provided along at least two peripheral edges so that the sheet may be easily manipulated without adhering to the users hands. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the tape of Secula and Krolick in view of Hisaoka or Nelson in order to provide an area free of adhesive which the user can utilize to manipulate the tape without getting adhesive on fingers or hands.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA